

DATE: July 1, 2009

TO: District Health Directors
District Environmental Health Managers

GMP #149

FROM: Karen Remley, M.D., M.B.A., F.A.A.P.
State Health Commissioner

THROUGH: Jim Burns, M.D., M.B.A.
Deputy Commissioner of Public Health

Robert W. Hicks, Director
Office of Environmental Health Services

SUBJECT: Interim Guidelines to Implement HB 1788 of the 2009 General Assembly session,
an act to amend Title 15.2-2157 of the *Code of Virginia*.

Interim Guidance

This interim policy is effective until the Board of Health (BOH) adopts final regulations for the operation and maintenance (O&M) of alternative onsite sewage systems. Promulgation of final regulations will make this policy obsolete.

Legislative Overview:

HB 1788 of the 2009 General Assembly, an act to amend Title 15.2-2157 of the *Code of Virginia*, requires the following:

1. Manufacturers of alternative systems must provide their O&M instructions to the BOH for approval.
2. Owners of alternative sewage systems serving a residential structure must record in the land records an instrument identifying by reference the applicable maintenance regulations for each component of the system, which can then be transferred with the property upon sale.

3. Until the BOH adopts final O&M regulations for alternative onsite sewage systems, owners must operate their alternative onsite sewage systems in accordance with the manufacturer's instructions, any BOH requirement, or any local O&M requirement, whichever is more stringent. The Virginia Department of Health (VDH) must condition operation permits for alternative systems serving a residential structure to assure owners comply with the O&M standards.

Scope

These interim guidelines apply to alternative onsite sewage systems serving a residential structure. Owners of onsite sewage systems that serve commercial facilities are not included. Owners of alternative discharging sewage systems are not included.

Definitions

"Alternative discharging sewage system" means any device or system which results in a point source discharge of treated sewage for which the Board of Health may issue a permit authorizing construction and operation when such system is regulated by the State Water Control Board pursuant to a general Virginia Pollutant Discharge Elimination System permit issued for an individual single family dwelling with flows less than or equal to 1,000 gallons per day.

"Alternative onsite sewage system" or "alternative onsite system" means a treatment works that is not a conventional onsite sewage system and does not result in a point source discharge.

"Conventional onsite sewage system" means a treatment works consisting of one or more septic tanks with gravity, pumped, or siphoned conveyance to a gravity distributed subsurface drainfield.

"Onsite sewage system" means either a conventional or alternative onsite sewage system.

Plan to Implement HB1788:

The Division of Onsite Sewage and Water Supply (DOSWS) will gather and list O&M instructions for manufacturers of alternative onsite sewage systems. See Appendix I for the list of approved O&M instruction manuals. Staff should advise clients who own or plan to own alternative onsite sewage systems to review the list of O&M instructions and be aware of the O&M requirements for their particular system. DOSWS will update and amend the list of instruction manuals as needed.

District management teams must develop a plan to gather a complete inventory of alternative onsite sewage systems located in their respective health districts. The plans must be submitted to DOSWS no later than October 1, 2009 and must describe methods to have a

complete inventory of alternative onsite sewage systems by July 1, 2010. Once received, DOSWS will collaborate with the district management teams and schedule necessary meetings to revise plans. Plans must describe how owners can be identified and contacted, including what information should be delivered to owners upon contact. DOSWS will provide feedback on each plan by December 1, 2009. District management teams must finalize their plans by January 15, 2010. If the district management team does not believe that a complete inventory can be gathered by July 1, 2010, then the team should outline their unique challenges, discuss how the challenges will be overcome, and provide a revised completion date.

Beginning July 1, 2009, district management teams must assure that every operation permit issued to an owner of an alternative onsite sewage system for residential use includes a statement as follows:

Until the promulgation of final regulations governing the operation and maintenance of alternative onsite sewage systems pursuant to Chapters 892 and 924 of the Acts of Assembly of 2007, alternative onsite sewage systems shall be operated and maintained pursuant to such approved instructions, any applicable regulations or Guidance Memoranda and Policies adopted by the Board, or any local operation and maintenance standards, whichever are more stringent. Owners are advised to be aware of the O&M instructions for their alternative onsite sewage system and to follow them.

Before an operation permit is issued for an alternative onsite sewage system serving a residential structure, the notice in Appendix III must be properly recorded under the owner's name in the grantor index of the land records. District management teams may revise or edit the notice in Appendix III to comply with local requirements specified by the Clerk of the Court holding jurisdiction.

Beginning July 1, 2009, district management teams must assure that every construction permit issued to an owner of an alternative onsite sewage system to serve a residential structure includes the memorandum in Appendix II.

CHAPTER 786

An Act to amend and reenact § [15.2-2157](#) of the Code of Virginia, as it shall become effective, relating to regulation of septic systems.

[H 1788]

Approved April 8, 2009

Be it enacted by the General Assembly of Virginia:

1. That § [15.2-2157](#) of the Code of Virginia, as it shall become effective, is amended and reenacted as follows:

§ [15.2-2157](#). Onsite sewage systems when sewers not available; civil penalties.

A. Any locality may require the installation, maintenance and operation of, regulate and inspect onsite sewage systems or other means of disposing of sewage when sewers or sewerage disposal facilities are not available; without liability to the owner thereof, may prevent the maintenance and operation of onsite sewage systems or such other means of disposing of sewage when they contribute or are likely to contribute to the pollution of public or private water supplies or the contraction or spread of infectious, contagious and dangerous diseases; and may regulate and inspect the disposal of human excreta.

B. Any locality that (i) has a record of the location of alternative onsite sewage systems; (ii) has notified owners of their maintenance responsibility for such systems; and (iii) has a method to identify property transfer may adopt an ordinance establishing a uniform schedule of civil penalties for violations of specified provisions for the operation and maintenance of alternative onsite sewage systems, as defined in § [32.1-163](#), that are not abated or remedied within 30 days after receipt of notice of violation from the local health director or his designee. No civil action authorized under this section shall proceed while a criminal action is pending.

This schedule of civil penalties shall be uniform for each type of specified violation, and the penalty for any one violation shall be a civil penalty of not more than \$100 for the initial summons and not more than \$150 for each additional summons. Each day during which the violation is found to have existed shall constitute a separate offense. However, specified violations arising from the same operative set of facts shall not be charged more frequently than once in any 10-day period, and a series of specified violations arising from the same operative set of facts shall not result in civil penalties exceeding a total of \$3,000. If the violation is not abated after the imposition of the maximum fine, the locality may pursue other remedies as provided by law. Designation of a particular ordinance violation for a civil penalty pursuant to this section shall be in lieu of criminal penalties, except for any violation that contributes to or is likely to contribute to the pollution of public or private water supplies or the contraction or spread of infectious, contagious, and dangerous diseases.

The local health director or his designee may issue a civil summons ticket as provided by law for a scheduled violation. Any person summoned or issued a ticket for a scheduled violation may make an appearance in person or in writing by mail to the department of finance or the treasurer

of the locality prior to the date fixed for trial in court. Any person so appearing may enter a waiver of trial, admit liability, and pay the civil penalty established for the offense charged.

If a person charged with a scheduled violation does not elect to enter a waiver of trial and admit liability, the violation shall be tried in the general district court in the same manner and with the same right of appeal as provided for by law. In any trial for a scheduled violation, the locality shall have the burden of proving by a preponderance of the evidence the liability of the alleged violator. An admission of liability or finding of liability under this section shall not be deemed an admission at a criminal proceeding.

This section shall be not interpreted to allow the imposition of civil penalties for activities related to land development.

C. When sewers or sewerage disposal facilities are not available, a locality shall not prohibit the use of alternative onsite sewage systems that have been approved by the Virginia Department of Health for use in the particular circumstances and conditions in which the proposed system is to be operating.

D. A locality shall not require maintenance standards and requirements for alternative onsite sewage systems that exceed those allowed under or established by the State Board of Health pursuant to § [32.1-164](#).

E. The State Health Commissioner shall require, as a precondition to the issuance of an alternative onsite sewage system permit pursuant to § [32.1-164](#) to serve a residential structure, that the property owner record an instrument identifying by reference the applicable maintenance regulations for each component of the system in the land records of the clerk of the circuit court in the jurisdiction where all or part of the site or proposed site of the onsite sewage system is to be located, which shall be transferred with the title to the property upon the sale or transfer of the land that is the subject of the permit.

2. That the provisions contained in subsections C and D of § [15.2-2157](#) of the Code of Virginia shall become effective 30 days following final promulgation by the Board of Health of regulations governing the operation and maintenance of alternative onsite sewage systems pursuant to Chapters 892 and 924 of the Acts of Assembly of 2007.

3. That the Board of Health shall require the manufacturer of any alternative onsite sewage system approved for use in the Commonwealth to provide operation and maintenance instructions for such system for the Board's approval. Until the promulgation of final regulations governing the operation and maintenance of alternative onsite sewage systems pursuant to Chapters 892 and 924 of the Acts of Assembly of 2007, alternative onsite sewage systems shall be operated and maintained pursuant to such approved instructions, any applicable regulations or Guidance Memoranda and Policies adopted by the Board, or any local operation and maintenance standards, whichever are more stringent; and operation permits for such systems shall be conditioned upon the owners' compliance with such standards.

Appendix I

For the most current list of O & M Instruction Manuals, please visit:

<http://www.vdh.virginia.gov/EnvironmentalHealth/Onsite/newsinterest/index.htm>



COMMONWEALTH of VIRGINIA

Department of Health

KAREN REMLEY, MD, MBA, FAAP
STATE HEALTH COMMISSIONER

P O BOX 2448
RICHMOND, VA 23218

TTY 7-1-1 OR
1-800-828-1120

Appendix II

Notice for Recordation

TO: _____

FROM: _____
Environmental Health Specialist, Sr.
Virginia Department of Health

Property Identification: _____ Tax Map: _____
Street Address: _____
City/Town/Zip Code: _____
County: _____

TO WHOM IT MAY CONCERN:

The _____ County Health Department, [INSERT ADDRESS] has approved an alternative onsite sewage system for use for the property identified above as long as the system is properly operated and maintained and performs in accordance with the *Sewage Handling and Disposal Regulations*.

Until promulgation of final regulations governing the operation and maintenance of alternative onsite sewage systems pursuant to Chapters 892 and 924 of the Acts of Assembly of 2007, alternative onsite sewage systems shall be operated and maintained pursuant to such approved instructions, any applicable regulations or Guidance Memoranda and Policies adopted by the Board of Health, or any local operation and maintenance standards, whichever are more stringent. Owners are advised to be aware of the operation and maintenance instructions for their alternative onsite sewage systems and to follow them. Copies of the operation and maintenance instructions can be found by contacting the local health department holding jurisdiction in the county where the onsite sewage system is located.



COMMONWEALTH of VIRGINIA

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Appendix III

MEMORANDUM

TO: _____

FROM: _____
Environmental Health Specialist, Sr.
Virginia Department of Health

SUBJECT: Recordation of Future Operation Permit

Property Identification: Tax Map: _____

Street Address: _____

City/Town/Zip Code: _____

County: _____

Dear _____:

Your application to construct an alternative sewage system to serve residential use filed on _____ with the _____ has been evaluated in accordance with the requirements contained in Section 32.164.1 of the *Code of Virginia*, 12 VAC 5-610-250 of the *Sewage Handling and Disposal Regulations*, and current agency policies and procedures for processing such applications for Conditional Permits.

Your application is approved. In accordance with §15.2-2157 of the *Code of Virginia*, operation permits for alternative onsite sewage systems serving residential use must be conditioned. Your Operation Permit, which will be issued after the alternative onsite sewage system is constructed and approved for use, will be valid as long as you properly operate and maintain your sewage system.

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Title 15.2-2157 of the *Code of Virginia* requires you to record in the land records a reference to the applicable maintenance regulations for each component of the alternative onsite sewage system, which shall be transferred with the title to the property upon the sale or transfer. Before you receive an operation permit for your alternative onsite sewage system, you must record a notice into the land records of the Clerk of the Circuit Court that has proper jurisdiction over this property. You must furnish to the local health department a certification from the Clerk of the Circuit Court showing the deed book number and page number (or instrument number) upon which the notice was recorded. The notice must be indexed in the grantor index under your name in the land records

The notice will state the following:

Until the promulgation of final regulations governing the operation and maintenance of alternative onsite sewage systems pursuant to Chapters 892 and 924 of the Acts of Assembly of 2007, alternative onsite sewage systems shall be operated and maintained pursuant to such approved instructions, any applicable regulations or Guidance Memoranda and Policies adopted by the Board of Health, or any local operation and maintenance standards, whichever are more stringent. Owners are advised to be aware of the O&M instructions for their alternative onsite sewage system and to follow them. Copies of the operation and maintenance instructions can be found by contacting the local health department holding jurisdiction in the county where the onsite sewage system is located.

If this office may be of further service to you, please let us know by calling _____.

Sincerely,

Environmental Health Specialist, Sr.